

ORIGINAL

COMMISSIONERS
BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

JODI JERICH
EXECUTIVE DIRECTOR

OPEN MEETING ITEM^A

6/11-12/13



0000145167

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Phoenix, AZ 85007
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ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Bob Stump, Chairman
Gary Pierce
Brenda Burns
Bob Burns
Susan Bitter Smith

FROM: Matthew J. Neubert *mjn*
Director of Securities

DATE: May 28, 2013

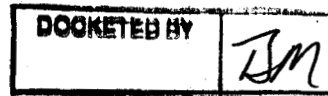
RE: Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same By: Respondents International Air Medical Services, Inc., Thomas F. Kelley, and Laura Kelley
Docket No. S-20858A-12-0412

CC: Jodi Jerich, Executive Director

Arizona Corporation Commission

DOCKETED

MAY 29 2013



ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

2013 MAY 29 A 9:50

RECEIVED

Attached is a proposed Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties and Consent to Same By: Respondents International Air Medical Services, Inc., Thomas F. Kelley, and Laura Kelley ("Order"). Laura Kelley ("Respondent Spouse") was joined pursuant to A.R.S. § 44-2031(C) solely for the purposes of determining the liability of the marital community. The Order finds that from at least September 2009 to June 2012, Respondents International Air Medical Services, Inc. ("IAMS") and Thomas F. Kelley offered and sold investors stock and promissory notes issued by IAMS, a start-up long range air ambulance business. Respondents raised \$1,522,000 from investors, and only \$115,700 was repaid. Respondents are not registered as securities salesmen or dealers, nor has the investment been registered with the Commission.

The Order finds that Respondents violated A.R.S. §§ 44-1841 and 44-1842 by selling unregistered securities while being unregistered. In addition, the Order finds that Respondents violated A.R.S. §44-1991(A).

The Order requires Respondents to permanently cease and desist from violating the Securities Act, to pay a \$50,000 administrative penalty, and to pay restitution of \$1,406,300.

The Division believes that the Order is appropriate to protect the public welfare.

Originator: Stacy Luedtke

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BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

Respondents.

DECISION NO. _____

**ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME
BY: RESPONDENTS INTERNATIONAL AIR
MEDICAL SERVICES, INC., THOMAS F.
KELLEY, AND LAURA KELLEY**

Respondents International Air Medical Services, Inc., Thomas F. Kelley and Laura Kelley ("Respondents") elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order for Restitution, Order for Administrative Penalties and for Other Affirmative Action ("Order"). Respondents admit the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

FINDINGS OF FACT

1. At all times relevant, Respondent Thomas F. Kelley ("Kelley") has been a married man and a resident of the state of Arizona. At all times relevant, Kelley offered and sold unregistered securities within and from Arizona in his individual capacity, and on behalf of

1 International Air Medical Services, Inc. ("IAMS") as the president and/or CEO, and general
2 counsel. Kelley has not been registered by the Commission as a securities salesman or dealer.

3 2. At all times relevant, Respondent IAMS has been an Arizona corporation. IAMS
4 was organized under the laws of the state of Arizona in September 2006, dissolved in 2009, and
5 was re-organized under the laws of the state of Arizona in October 2009. IAMS has not been
6 registered by the Commission as a securities salesman or dealer.

7 3. Laura Kelley was at all relevant times the spouse of Respondent Kelley. Laura
8 Kelley may be referred to as "Respondent Spouse". Respondent Spouse is joined in this action
9 under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital
10 community.

11 4. At all times relevant, Respondent Kelley was acting for his own benefit and for the
12 benefit or in furtherance of his and Respondent Spouse's marital community.

13 5. IAMS and Kelley may be referred to collectively as "Respondents."

14 6. From on or about September 2009 until at least June 2012, Kelley offered and
15 sold promissory notes and/or stock in IAMS, a long range jet air ambulance company ("IAMS
16 Investments").

17 7. From at least September 2009 to the present, Kelley acted as general counsel,
18 president and/or CEO of IAMS.

19 8. Respondents offered the IAMS Investments to Arizona offerees, and to out of
20 state offerees from Arizona. Respondents represented to offerees that IAMS was a start-up
21 long range jet air ambulance business. Respondents represented to offerees and that investor
22 funds would be used to establish a headquarters in Arizona; obtain a federally mandated
23 commercial operating certificate (Part 135 certification) to conduct operations for
24 compensation or hire; operate from Arizona; and then expand the business to establish bases in
25 other states to increase service capacity (i.e. the ability to accept more air ambulance flights).
26

1 9. Respondents raised funds for the IAMS Investments and issued investors IAMS
2 stock, promissory notes, and/or a combination of promissory notes and stock.

3 10. The IAMS Investments have not been registered as securities with the
4 Commission to be offered or sold within or from Arizona.

5 11. IAMS, either through Kelley or authorized third parties, supplied offerees with
6 subscription documents, business plans, PowerPoint presentations, and, in at least one instance,
7 a private placement memorandum, for the IAMS Investments. Investor documents were
8 drafted and finalized for content by Kelley.

9 12. At least one business plan provided to an investor stated, "We have created this
10 unique opportunity where the investor can elect to have the security of getting 100% of their
11 money returned plus interest."

12 13. In October 2011, IAMS held an "open house" in which the IAMS Investments
13 were offered to attendees. Shortly thereafter, representatives of IAMS sent e-mails to attendees
14 attaching an IAMS brochure, PowerPoint presentation, and business plan.

15 14. From at least September 2009 until at least June 2012, IAMS issued promissory
16 notes in exchange for capital investments by at least fourteen investors. The majority of these
17 promissory notes reflect varying interest rates between 8% - 20%, with higher default interest
18 rates, and terms for repayment from approximately 30 days to three years. For at least thirteen
19 of these investors, IAMS issued the promissory notes in conjunction with either preferred or
20 common stock in IAMS (hereafter "Equity + Note Investors").

21 15. In 2009, IAMS represented to at least one Equity + Note Investor that "THERE
22 WILL BE AN ESCROW OF FUNDS UP TO AND NOT TO EXCEED \$200,000. ONCE
23 \$200,000 IN SUBSCRIPTION MONEYS HAS BEEN RECEIVED IN ESCROW, ALL
24 SUBSCRIPTION MONEYS, INCLUDING THE ORIGINAL ESCROW, WILL BE
25 IMMEDIATELY AVAILABLE TO THE COMPANY FOR ITS OPERATING EXPENSES."

26 16. IAMS has never escrowed any investor funds.

1 17. For at least five of the Equity + Note Investors, IAMS issued Stock Purchase
2 Agreements or Secured Loan Agreements ("Agreements") in conjunction with a promissory
3 note ("Secured Equity + Note Investors"). The first of these Secured Equity + Note Investors
4 invested in June 2011 ("First Secured Equity + Note Investor").

5 18. The Agreements for each of the Secured Equity + Note Investors provided for
6 IAMS stock to be issued to the investor upon receipt of investment funds, and specifically
7 referenced as "Attachment A" a promissory note, and "Attachment B" a security agreement,
8 that would also be issued when investment funds were received.

9 19. Each of these Secured Equity + Note Investors' investment documents contained
10 the following terms:

- 11 a. A 10% interest rate;
- 12 b. Quarterly interest payments;
- 13 c. A balloon payment of principal and accrued but unpaid interest after 35-36
14 months;
- 15 d. An option to convert outstanding principal and unpaid interest to IAMS
16 shares of stock.

17 20. Each of these Secured Equity + Note Investors' investment documents contained
18 the following representations:

- 19 a. That IAMS pledged security in "all assets of IAMS all assets of IAMS
20 now existing or hereafter arising or acquired" for each investor;
- 21 b. That "[t]he debt described herein is IAMS' most senior debt";
- 22 c. That the collateral was "free from any lien, claim, security interest,
23 encumbrance, or other right, title, or interest of any other person or entity except
24 the Senior Lender(s)."

1 d. "Debtor [IAMS] will not hereafter grant security interest in, or sell the
2 Collateral to, any other person, firm or corporation, without Secured Party's
3 [investor's] consent.

4 21. An additional investor that was issued only promissory notes for his investments
5 in IAMS was also pledged security in "all assets of IAMS now existing or hereafter arising or
6 acquired" ("Note Only Investor"). IAMS promised the Note Only Investor that the collateral
7 was "free from any lien claim security interest, encumbrance, or other right, title, or interest of
8 any other person or entity except the Senior Lender(s)." The term "Senior Lenders(s) was not
9 defined in the investment materials.

10 22. With the exception of the First Secured Equity + Note Investor, IAMS
11 misrepresented to the remaining Secured Equity + Note Investors, that they held the "most
12 senior debt" and that the collateral was "free from any lien, claim, security interest,
13 encumbrance, or other right, title, or interest of any other person or entity except the Senior
14 Lender(s)." IAMS failed to disclose previous security interests pledged in the same collateral or
15 disclose previous note-holders with priority.

16 23. IAMS failed to obtain the Secured Equity + Note Investors' written consent when
17 pledging the same collateral to subsequent investors.

18 24. Kelley was a signatory for IAMS for the promissory notes and security
19 agreements issued to investors.

20 25. The majority of investors who invested via promissory notes with IAMS have not
21 been paid as required under the terms of their notes, with many receiving no payments at all.

22 26. IAMS also issued IAMS common or preferred stock to investors in exchange for
23 capital contributions ("Equity Only Investors"). At least six investors invested in IAMS as
24 Equity Investors.

1 27. The majority of Equity Only Investors executed Stock Purchase Agreements with
2 IAMS. Kelley signed the Stock Purchase Agreements as the President and General Counsel of
3 IAMS.

4 28. The Stock Purchase Agreements required IAMS to deliver stock certificates to
5 each investor. IAMS failed to issue or delayed (in one instance nearly a year) issuing a stock
6 certificate for at least three investors.

7 29. The IAMS stock certificates that were issued to investors were issued and signed
8 by Kelley.

9 30. On numerous occasions, Kelley offered IAMS board of director positions at
10 IAMS as part of the IAMS Investments, yet did not have any board resolutions to do so.
11 Further, these "board member investors" have not been advised of board meetings or presented
12 with any opportunity to vote as board members.

13 31. Respondents issued and sold promissory notes and/or stock in IAMS to investors
14 totaling approximately \$1,552,000. Of this amount, investors have received payments totaling
15 only approximately \$115,700.

16 32. Term sheets were also provided to offerees, which stated that stockholders had
17 voting rights in IAMS with the shares consistent with IAMS's Articles of Incorporation and By
18 Laws. Offerees were also advised that stockholders would be able to elect board members and
19 appoint a Chairman of the Board.

20 33. IAMS' By Laws provide for annual stockholder meetings to elect board members
21 starting in 2008. As of July 2012, IAMS has held no annual stockholder meetings. IAMS has
22 appointed numerous board members without any election by stockholders, appointed board
23 members that exceed the cap of nine allowed by IAMS' By Laws, with Kelley alone appointing
24 a Chairman of the Board.

25 34. Investors' funds were transferred, wired and/or deposited into Arizona bank
26 accounts owned and controlled by Respondents.

35. Kelley, as well as one other IAMS officer, utilized the IAMS account, which included investor funds, for their own personal expenses. Kelley, however, did not draw a salary from IAMS. The board of directors has never approved any compensation or salaries for officers of IAMS, which is required by the IAMS By Laws.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondents offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. Respondents violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. Respondents violated A.R.S. § 44-1842 by offering or selling securities while neither registered as dealers or salesmen nor exempt from registration.

5. Respondents violated A.R.S. § 44-1991(A).

6. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

8. Respondents' conduct is grounds for administrative penalties under A.R.S. § 44-2036.

9. Respondent Kelley acted for the benefit of his and Respondent Spouse's marital community and, pursuant to A.R.S. §§ 25-214 and 25-215, this Order of restitution and administrative penalties is a debt of the community.

10. Respondent Kelley directly or indirectly controlled IAMS within the meaning of A.R.S. § 44-1999; Kelley is jointly and severally liable with, and to the same extent as, IAMS for IAMS' violations of A.R.S. § 44-1991.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondents' consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondents, and any of Respondents' agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that Respondents comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondents IAMS and Kelley individually, and the marital community of Respondent Kelley and Respondent Spouse, jointly and severally, shall pay restitution to the Commission in the principal amount of \$1,406,300. Payment is due in full on the date of this Order. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. Any principal amount outstanding shall accrue interest at the rate of 4.25 percent per annum from the date this Order is entered until paid in full.

The Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor because the investor is deceased and the Commission cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at the time of the distribution,

1 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
2 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
3 shall be transferred to the general fund of the state of Arizona.

4 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents IAMS and
5 Kelley individually, and the marital community of Respondent Kelley and Respondent Spouse,
6 jointly and severally shall pay an administrative penalty in the amount of \$50,000. Payment is due
7 in full on the date of this Order. Payment shall be made to the "State of Arizona." Any amount
8 outstanding shall accrue interest from the date judgment is entered at the rate of 4.25 percent per
9 annum.

10 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
11 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
12 shall be applied to the penalty obligation.

13 IT IS FURTHER ORDERED that the restitution ordered hereunder shall be subject to legal
14 set-off pursuant to A.A.C. R14-4-308(C).

15 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the
16 Commission may bring further legal proceedings against that Respondent, including application to
17 the superior court for an order of contempt.

18 IT IS FURTHER ORDERED that this Order shall become effective immediately.

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BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2013.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(SLL)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondents International Air Medical Services, Inc. ("IAMS"), Thomas F. Kelley
3 ("Kelley") and Laura Kelley ("Respondent Spouse") (collectively "Respondents") admit the
4 jurisdiction of the Commission over the subject matter of this proceeding. Respondents
5 acknowledge that Respondents have been fully advised of Respondents' right to a hearing to
6 present evidence and call witnesses and Respondents knowingly and voluntarily waive any and all
7 rights to a hearing before the Commission and all other rights otherwise available under Article 11
8 of the Securities Act and Title 14 of the Arizona Administrative Code. Respondents acknowledge
9 that this Order To Cease And Desist, Order for Restitution, Order for Administrative Penalties and
10 for Other Affirmative Action ("Order") constitutes a valid final order of the Commission.

11 2. Respondents knowingly and voluntarily waive any right under Article 12 of the
12 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
13 resulting from the entry of this Order.

14 3. Respondents acknowledge and agree that this Order is entered into freely and
15 voluntarily and that no promise was made or coercion used to induce such entry.

16 4. Respondents acknowledge that Respondents have been represented by an attorney in
17 this matter, Respondents have reviewed this Order with Respondents' attorney, Alan Baskin, and
18 understands all terms it contains. Respondents acknowledge that their attorney has apprised them of
19 their rights regarding any conflicts of interest arising from dual representation. Respondents
20 acknowledge that they have each given their informed consent to such representation.

21 5. Respondents neither admit nor deny the Findings of Fact and Conclusions of Law
22 contained in this Order. Respondents agree that Respondents shall not contest the validity of the
23 Findings of Fact and Conclusions of Law contained in this Order in any present or future
24 proceeding in which the Commission or any other state agency is a party concerning the denial or
25 issuance of any license or registration required by the state.
26

1 6. By consenting to the entry of this Order, Respondents agree not to take any action or
2 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
3 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual
4 basis. Respondents will undertake steps necessary to assure that all of Respondents' agents and
5 employees understand and comply with this agreement. This Order is entered without trial of any
6 issue of fact. Except for in this case and any other proceeding involving the Commission, this
7 Order is not intended to have any collateral estoppel or res judicata effect against Respondents or to
8 preclude Respondents from defending themselves in such proceedings not involving the
9 Commission.

10 7. While this Order settles this administrative matter between Respondents and the
11 Commission, Respondents understand that this Order does not preclude the Commission from
12 instituting other administrative or civil proceedings based on conduct not addressed by this Order.

13 8. Respondents understand that this Order does not preclude the Commission from
14 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
15 that may be related to the matters addressed by this Order.

16 9. Respondents understand that this Order does not preclude any other agency or
17 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
18 proceedings that may be related to matters addressed by this Order.

19 10. Respondents IAMS and Kelley agree that they will not apply to the state of Arizona
20 for registration as a securities dealer or salesman or for licensure as an investment adviser or
21 investment adviser representative until such time as all restitution and penalties under this Order are
22 paid in full.

23 11. Respondents IAMS and Kelley agree that they will not exercise any control over any
24 entity that offers or sells securities or provides investment advisory services within or from Arizona
25 until such time as all restitution and penalties under this Order are paid in full.
26

12. Respondent Kelley and Respondent Spouse acknowledge that any restitution or penalties imposed by this Order are obligations of Respondent Kelley as well as the marital community.

13. Respondents consent to the entry of this Order and agree to be fully bound by its terms and conditions.

14. Respondents acknowledge and understand that if Respondent fails to comply with the provisions of the order and this consent, the Commission may bring further legal proceedings against Respondents, including application to the superior court for an order of contempt.

15. Respondents understand that default shall render Respondents liable to the Commission for its costs of collection and interest at the maximum legal rate.

16. Respondents agree and understand that if Respondents fail to make any payment as required in the Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. Respondents agree and understand that acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.

17. Kelley represents that he is President and General Counsel of IAMS and has been authorized by IAMS to enter into this Order for and on behalf of it.

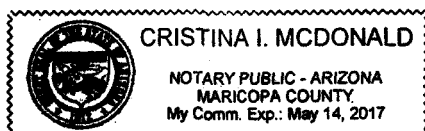
Thomas F. Kelley

STATE OF ARIZONA)
) ss
County of Maricopa)

SUBSCRIBED AND SWORN TO BEFORE me this 23rd day of May, 2013.

NOTARY PUBLIC

My commission expires:



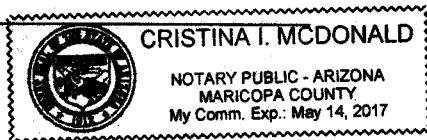
Laura Kelley
Laura Kelley

STATE OF ARIZONA)
County of Maricopa) ss
)

SUBSCRIBED AND SWORN TO BEFORE me this 23rd day of May, 2013.

Cristina I. McDonald
NOTARY PUBLIC

My commission expires:



Thomas F. Kelley
International Air Medical Services, Inc.

By Thomas F. Kelley

Its President and General Counsel

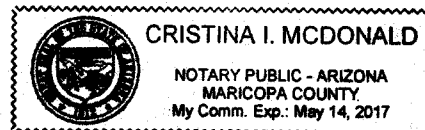
STATE OF ARIZONA)
County of Maricopa) ss
)

SUBSCRIBED AND SWORN TO BEFORE me this 23rd day of May, 2013.

Cristina I. McDonald
NOTARY PUBLIC

My commission expires:

May 14, 2017



SERVICE LIST FOR: International Air Medical Services, Inc., et al

Alan Baskin, Esq.

Bade Baskin Richards

80 East Rio Salado Parkway, Suite 511

Tempe, AZ 85281

Attorney for Respondents

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 BOB STUMP, Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 In the matter of:

DOCKET NO. S-20858A-12-0412

9 INTERNATIONAL AIR MEDICAL
10 SERVICES, INC.,

**NOTICE OF FILING OF PROPOSED
OPEN MEETING AGENDA ITEM**

11 THOMAS F. KELLEY and LAURA KELLEY,
12 husband and wife,

13 Respondents.

14 Pursuant to A.A.C. R14-4-303, you are hereby notified that the attached: Order to Cease
15 and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same By:
16 Respondents International Air Medical Services, Inc., Thomas F. Kelley, and Laura Kelley was
17 filed with the Arizona Corporation Commission's Docket Control.

18 Dated: 5/29/13

By: 

Stacy L. Luedtke, Staff Attorney

19 I hereby certify that I have this day served the foregoing document on all parties of record in this
20 proceeding by mailing a copy thereof, properly addressed with first class postage prepaid to:

21 Alan Baskin, Esq.
22 Bade Baskin Richards
23 80 East Rio Salado Parkway, Suite 511
24 Tempe, AZ 85281
25 Attorney for Respondents

26 Dated: 5/29/13

By: 

Emie R. Bridges, Executive Assistant

Decision No. _____